

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 322

Introduced by Assembly Member Portantino
(Coauthor: Assembly Member Fuentes)

February 9, 2011

An act to add and repeal Section 680.1 of the Penal Code, relating to forensic evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Portantino. Forensic evidence: rape kits.

Existing law, the Sexual Assault Victims' DNA Bill of Rights, authorizes a law enforcement agency investigating certain felony sex offenses, upon the request of the victim, and subject to the commitment of resources, to inform the victim whether or not a DNA profile was obtained from the testing of the rape kit evidence or other crime scene evidence from the case, whether or not that information has been entered into the Department of Justice Data Bank of case evidence, and whether or not there is a match between the DNA profile developed from the rape kit evidence or other crime scene evidence and a DNA profile contained in the Department of Justice Convicted Offender DNA Data Base, as specified. Existing law also requires that the victim be given written notification by the law enforcement agency if the law enforcement agency elects not to perform DNA testing of the rape kit evidence or other crime scene evidence, or intends to destroy or dispose of the rape kit evidence or other crime scene evidence prior to the expiration of the statute of limitations, as specified.

This bill would require local law enforcement agencies responsible for taking or collecting rape kit evidence to annually report to the Department of Justice statistical information pertaining to the testing and submission for DNA analysis of rape kits, as specified. The initial report would be due by July 1, 2013. The reports received by the department would be subject to inspection under the California Public Records Act.

~~The bill would require law enforcement agencies that collect, on or after July 1, 2012, a rape kit in connection with an investigation into an allegation of the crime of rape, to submit that rape kit for testing within 30 business days of collection to a forensic laboratory. The bill would require the department to establish a timeframe for processing rape kits collected prior to July 1, 2012.~~

~~The bill would require all rape kits submitted to a forensic laboratory on or after July 1, 2012, to be analyzed within 6 months after receipt by the laboratory if sufficient staffing and resources are available. The bill would require that by January 1, 2014, the department shall submit to the Governor and both houses of the Legislature a plan for collecting and testing rape kits, including recommendations of any changes to the timeline for analysis.~~

~~The bill would require each California law enforcement agency, by July 1, 2013, to provide written notice to the department of the number of rape kits in the custody of the law enforcement agency that have not been previously submitted to a laboratory for analysis.~~

~~The bill would require that by January 1, 2014, appropriate arrangements be made between the law enforcement agency and the department, or a laboratory approved and designated by the department to ensure that all rape kits that were collected prior to July 1, 2012, have been tested.~~

The bill would provide that its provisions would become inoperative on July 1, 2017, and would be repealed on January 1, 2018.

By imposing additional reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 680.1 is added to the Penal Code, to read:

2 ~~680.1.— (a) The Legislature finds and declares the following:~~

3 ~~(1) It is the intention of the State of California that all rape kits~~
4 ~~collected by California law enforcement agencies as evidence of~~
5 ~~the crime of rape be submitted to a forensic laboratory and tested~~
6 ~~within designated timeframes.~~

7 ~~(2) A national organization has recently reported that one in six~~
8 ~~women and one in 33 men will be sexually assaulted in their~~
9 ~~lifetimes, but only 6 percent of rapists will ever spend a day in jail.~~

10 ~~(3) Using statistics as reported in 2008 to the Department of~~
11 ~~Justice it is evident that many California counties are not doing~~
12 ~~enough to arrest perpetrators of the crime of rape. While the arrest~~
13 ~~rate for rape in New York City, a city that tests all rape kits, has~~
14 ~~been reported at 70 percent, the California county average is only~~
15 ~~29.7 percent.~~

16 ~~(4) Many counties in California have reported arrest rates for~~
17 ~~the crime of forcible rape that are as low as 0 percent. There are~~
18 ~~many counties that record arrests for less than 18 percent of the~~
19 ~~forcible rapes that occur in their county.~~

20 ~~(5) Rape kits are collected after an allegation of rape and contain~~
21 ~~tangible, direct DNA evidence of the crime committed. Past history~~
22 ~~has shown that many counties are not processing all the rape kits~~
23 ~~that are being collected. Los Angeles County and the City of Los~~
24 ~~Angeles were shown in 2008 to have at least 10,000 unopened~~
25 ~~rape kits in their evidence lockers. Los Angeles County has~~
26 ~~committed to testing every rape kit and has seen its arrest rate rise~~
27 ~~from 23.7 percent in 2006 to 29.7 percent in 2008. Testing of all~~
28 ~~rape kits in California will increase the arrest rate for the crime of~~
29 ~~rape.~~

30 ~~(b) Each local law enforcement agency responsible for taking~~
31 ~~680.1. (a) Each local law enforcement agency responsible for~~
32 ~~taking or collecting rape kit evidence shall collect the following~~
33 ~~information for rape kits collected on or after January 1, 2012:~~

1 (1) The total number of rape kits collected during the preceding
2 calendar year and, of that total, the number of rape kits for which
3 the identity of the assailant is unknown.

4 (2) The total number of rape kits tested during the preceding
5 calendar year and, of that total, the number of rape kits for which
6 the identity of the assailant is unknown.

7 (3) The total number of rape kits submitted for DNA analysis
8 and, of that total, the number of rape kits for which the identity of
9 the assailant is unknown.

10 (4) The number of rape kits that law enforcement has submitted
11 for DNA analysis that remain untested and, of that number, the
12 number of rape kits for which the identity of the assailant is
13 unknown.

14 (5) The total number of untested rape kits that were not
15 submitted for DNA analysis in its possession as of January 1 of
16 the reporting year.

17 (e)

18 (b) Each local law enforcement agency responsible for taking
19 or collecting rape kit evidence shall report, by July 1 of each year,
20 the information collected pursuant to this section during the
21 preceding year to the Department of Justice. The initial report to
22 the department pursuant to this subdivision shall be made by July
23 1, 2013.

24 (d)

25 (c) The reports received by the department pursuant to
26 subdivision (b) are subject to inspection under the California Public
27 Records Act (Chapter 3.5 (commencing with Section 6250) of
28 Division 7 of Title 1 of the Government Code).

29 ~~(e) Law enforcement agencies that collect, on or after July 1,~~
30 ~~2012, a rape kit in connection with an investigation into an~~
31 ~~allegation of the crime of rape, shall submit that rape kit for testing~~
32 ~~within 30 business days of collection to a forensic laboratory.~~

33 ~~(f) Rape kits collected by a law enforcement agency prior to~~
34 ~~July 1, 2012, shall be submitted to a forensic laboratory. The~~
35 ~~department shall establish a reasonable timeframe mandating when~~
36 ~~local law enforcement agencies shall submit these kits in order to~~
37 ~~comply with the requirement in subdivision (i) that all of those~~
38 ~~rape kits be tested by January 1, 2014. Nothing in law shall prohibit~~
39 ~~or prevent local law enforcement agencies from submitting rape~~
40 ~~kits for testing sooner than deadlines established by the department.~~

1 ~~(g) (1) All rape kits submitted to a forensic laboratory on or~~
2 ~~after July 1, 2012, shall be analyzed within six months after receipt~~
3 ~~by the laboratory if sufficient staffing and resources are available.~~

4 ~~(2) By January 1, 2014, the department shall submit to the~~
5 ~~Governor and both houses of the Legislature a plan for collecting~~
6 ~~and testing rape kits submitted pursuant to this section. The plan~~
7 ~~shall review the six-month timeline in paragraph (1), and shall~~
8 ~~include, but not be limited to, recommendations as to appropriate~~
9 ~~changes, if any, to the six month timeline for completion and~~
10 ~~analysis of rape kits submitted after July 1, 2012, a summary of~~
11 ~~the inventory received, as well as requests for funding and~~
12 ~~resources necessary to meet the established timeline, or~~
13 ~~recommended changes to that timeline.~~

14 ~~(3) The plan submitted to the Legislature pursuant to paragraph~~
15 ~~(2) shall be submitted pursuant to Section 9795 of the Government~~
16 ~~Code.~~

17 ~~(h) By July 1, 2013, each California law enforcement agency~~
18 ~~shall provide written notice to the department, in a form and~~
19 ~~manner prescribed by the department, stating the number of rape~~
20 ~~kits in the custody of the law enforcement agency that have not~~
21 ~~been previously submitted to a laboratory for analysis.~~

22 ~~(i) By January 1, 2014, appropriate arrangements shall be made~~
23 ~~between the law enforcement agency and the department to ensure~~
24 ~~that all rape kits that were collected prior to July 1, 2012, have~~
25 ~~been tested.~~

26 ~~(j) The failure of a law enforcement agency to submit a rape kit~~
27 ~~collected on or after July 1, 2012, within 30 business days after~~
28 ~~receipt shall in no way alter the authority or responsibility of the~~
29 ~~law enforcement agency to submit a rape kit for testing under this~~
30 ~~section.~~

31 ~~(k) The department shall promulgate rules that prescribe the~~
32 ~~procedures for the operation of this section including such~~
33 ~~emergency regulations as necessary.~~

34 ~~(l)~~

35 ~~(d) This section shall remain operative only until July 1, 2017,~~
36 ~~and shall be repealed on January 1, 2018, unless a later enacted~~
37 ~~statute, that is enacted before January 1, 2018, deletes or extends~~
38 ~~that date.~~

39 SEC. 2. If the Commission on State Mandates determines that
40 this act contains costs mandated by the state, reimbursement to

- 1 local agencies and school districts for those costs shall be made
- 2 pursuant to Part 7 (commencing with Section 17500) of Division
- 3 4 of Title 2 of the Government Code.